

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

W.P.A No. 5412 of 2016

Namita Mondal & Ors.
-Vs-
The State of West Bengal & Ors.

For the Petitioners:	Mr. Arjun Ray Mukherjee, Mr. Apurba Ghosh, Mr. Anindya Ghosh, Ms. Esha Banerjee, Adv.
For the ADDA:	Mr. Debashis Saha, Ms. Srabanti Das.
For the State Respondents:	Mr. Soumitra Bandyopadhyay, Mr. Srinath Singha Roy.

Heard on: 10 October, 2023.

Judgment on: 17 October, 2023.

BIBEK CHAUDHURI, J. : –

1. Plot No.1713, 1716, 1717, 1719, 1723, 1724, 1725, 1726, 1727, 1729 situated at Mouza- Ganrui, JL No.12 within Police Station Asansol, pertaining to khatian No.295 in all measuring about 14.26 acres of land is the subject matter of the instant writ petition. The case of the petitioner is that their predecessor-in-interest namely, Keneram, Raju and Baidyanath Mondal became the owners of the aforesaid land by auction purchase held sometime in the year 1936 by the Sherastadar, Asansol Court. After purchase, the predecessors-in-interest recorded their names in CS Record of Rights and also RS Record of Rights.

2. It is the case of the petitioner that the state respondents claimed that the said plots excluding plot No.1729 at Mouza Ganrui was acquired by the State Government vide LA Case No.22 of 1966-67 and it was handed over to the Housing Department, Government of West Bengal by a notification No.17786-LA-IG-4-63 dated 1st October, 1963. Although the subject land was allegedly acquired in the year 1967, the petitioners or their predecessors were not paid any compensation in spite of several representations being made to the state respondents during the long time. Sometimes in the year 2005 the petitioners came to know that the subject land was handed over to Asansol, Durgapur Development Authority (ADDA) for construction of housing at Asansol. The petitioners filed an application under the Right to Information Act, 2005 to get specific information as to the ownership and status of the land in the year 2014 and the Information Officer vide letter dated 2nd September, 2014 informed them that the names of the predecessor-in-interests of the present petitioners are still recorded in the RS Record of Rights. Though, the predecessors-in-interest of the petitioners did not receive any notice of acquisition of the subject land, it is specifically found that the subject land is under the possession of the State Government, particularly Asansol Durgapur Development Authority (ADDA). The petitioners wanted to verify the record of the specific land acquisition case by virtue of which the subject land was allegedly acquired, but the Land Acquisition Collector, Burdwan informed them that the record of the LA case being very old is not available with the department. Subsequently, they came to

know on 20th November, 2015 that the subject land was acquired in LA case No.22 of 1966-67. The petitioners also prayed for a copy of the notice or gazette notification to ascertain as to whether the subject land in the above mentioned plots were acquired or not, but they were not supplied with any copy of notice or gazette notification. The petitioners then made a demand justice through their learned Advocate requiring the Land Acquisition Collector to mention the status of the acquisition of subject land as claimed by the respondents but they did not get any opposite reply from them.

3. For the reason aforesaid, the petitioner has filed the instant writ petition praying for the following reliefs:-

“a) A writ in the nature of Mandamus be issued commanding the respondents their servants, agents and/or employees and each of them specifically the respondent No. to forthwith to pronounce the Award and release necessary compensation, rent compensation and 100% (percentage) solatium in respect of the lands acquired by the Land Acquisition Collector, Burdwan, in L.A. Case No.22 of 1966-1967 notified by 17786-LA -IG- 4-63, dated 1010-1963 in Gazette Notification;

(b) A writ in the nature of Mandamus be issued commanding the Respondents their servants agent and/or employees and each one of them to forthwith to release necessary compensation in respect of land which already been utilized by the Government necessary process has not been initiated in accordance with law;

(c) A writ in the nature of Mandamus commanding respondents their servants specifically respondent no.2 and/or employees and each one of them to forthwith to divest the land which have been acquired by the Government of L.A. Case No.22 of 1966-1967 start by the Land Acquisition Collector, Burdwan, and admittedly unutilized by the Government and kept vacant.

(d) A writ in the nature of certiorari directing the respondents to certify and transmit all relevant records of this case before the Hon'ble Court so that conscionable justice may be administered;

(e) To issue Rule NISI in terms of the prayers (a), (b) and (c) above;

(f) An ad-interim order be passed directing the respondents and their agents for employee and each one of them to release at least Rs.10,00,000/- (Rupees Ten Lacs) only towards of ad-hoc compensation which will be adjusted with the final amount of compensation;

(g) Make the rule absolute after perusing the records and hearing the parties and their Learned Advocates;

(h) Pass further order or orders, direction or directions as Your Lordship may deem fit and proper;"

4. In compliance of an order dated 23rd June, 2017 passed by this Court, the respondent No.2, Land Acquisition Collector, Purba Bardhaman submitted a report stating, inter alia, that the subject land was acquired vide Land Acquisition Case No.22/1966-67. The original case record was handed over to the learned Assistant Government Pleader attached to Asansol Civil Court in the year 1981 in connection with reference Case No.2 of 1979 and since then, the original record of LA Case No.22/1966-67 is not traceable. It is also submitted by the respondent No.4 that he made an application for obtaining copy of the judgment passed in LA Reference Case No.2 of 1979 in the said report, the respondent No.4 has also raised an objection alleging, inter alia, that the petitioners were sleeping over their rights for a long period of about five decades and their belated claim of compensation and solatium for the

subject land is defeated by their own laches and delay. Subsequently, on 17th July, 2017 an affidavit in opposition has been filed on behalf of the Chief Executive Officer, ADDA, respondent No.4 herein. In the affidavit in opposition, apart from taking usual objection of maintainability, limitation etc., it is specifically submitted on behalf of the respondent No.4 that the petitioners do not have similar cause of action or jural relationship. The subject land was acquired by the LA Collector, Burdwan under LA Case No.22 of 1966-67 vide declaration No.17786-LA/IG/4/63 dated 1st October, 1963 and it was published on 21st November, 1963. Similarly, declaration No.11118-LA dated 30th June, 1966 was published on 21st July, 1966. By virtue of the aforesaid LA Case, the LA Collector acquired 214.47 acres of land covering 5 mouzas namely, Gopalpur, Ganrui, Kumarpur, Shitla and Govindapur in favour of the Housing Department, government of West Bengal for public purpose. Subsequently, in terms of the decision of the high power committee, Government of West Bengal, the Housing Department handed over possession of total area of land measuring about 312.92 acres in favour of ADDA on 4th June, 1997 by executing a deed of conveyance dated 29th July, 2008. The respondent No.4 is neither acquiring, nor requiring authority, therefore, it has no knowledge as to whether compensation was paid to the erstwhile owners/land losers or not. The respondent No.4 further stated in his affidavit-in-opposition that subsequently, ADDA handed over the said plots along with the other plots of land in favour of Bengal Sristy Infrastructure Development Limited. Since plot No.1729 of mouza Ganrui

is classified as a “khal” known as “Ganruinala”, the said plot was never acquired by the Collector Burdwan in the said LA Case. It is further stated by the respondent No.4 that the land in question has already been recorded in the name of the ADDA in LR Record of Rights. The respondent No.4 also claims that the Record of LA case No.22/1966-67 was handed over to the learned Additional Government Pleader in connection with reference case No.2 of 1979. Since then, they do not know about the record of the said LA case.

5. By a report in the form of affidavit filed on 8th September, 2017, the LA Collector, Purba Bardhaman, submitted a photostate copy of the judgment passed in LA Case No.2 of 1979. It is sufficient to mention here that the aforesaid case was instituted by one Praddut Kr. Roy and another. The petitioners or their predecessors-in-interest were not the applicant of the said LA Case No.2 of 1979. The said case also relates to Mouza Govindapur and not in respect of Mouza Ganrui. Therefore, in LA reference Case No.2 of 1979, the judgment passed in LA Case No.2 of 1979 does not have any relevance in respect of the claim of the petitioners. The petitioners have also filed an affidavit against the affidavit-in-opposition filed by the respondent No.2 and annexed a copy of the deed of conveyance executed in favour of ADDA transferring 151.04 acres of land of Mouza Ganrui, Govindapur, Kumarpur, Palasdiha and Gopalpur. In Schedule-1 of the deed of conveyance, the subject land of Mouza-Ganroi is mentioned having been transferred in favour of ADDA on 17th June, 2008.

6. These are all about the pleadings of the respective parties in the instant writ petition. From the record, a bunch of documents are found. Though the said documents were not made part of the pleadings, on examination of the said documents, this Court finds a copy of gazette notification by virtue of which declaration under Section 6 of Act 1 of 1894 was published on 21st July, 1966. The said gazette notification is reproduced below:-

“BURDWAN.-No. 11118-L.A./IG-4/63.--30th June. 1666.-
Whereas the Governor is satisfied that land is needed for a public purpose, namely, for Housing Development Scheme at Asansol in the villages of Gopalpur, Garui, Kumarpur, Shitla and Govindapur, jurisdiction list Nos. 4,3,6,8 and 7, police-station Asansol, district Burdwan, it is hereby declared that pieces of land comprising and measuring, more or less, 214.47 acres, are needed for the aforesaid public purpose at the public expense within the aforesaid villages of Gopalpur, Garui, Kumarpur, Shitla and Govindapur. Mines of coal, iron-stone, slate or other minerals lying under the land or any particular posrion of the land, except only such parts of the mines and minerals as it may be necessary to dig, or carry away, or use, in the construction of the work for the purpose of which the land is being acquired are not needed.

This declaration is made under the provisions of section 6 Act I of 1894 and section 3, clause (1), Act XVIII of 1885, to all whom it may concern.

A plan of the land may be inspected in the office of the Special Land Acquisition Officer as well as in that the joint Secretary, Government of West Bengal, Housing Department, Calcutta.

Part of cadastral survey plot Nos. 367 and 368 of village Gopalpur, jurisdiction list No.4; cadastral survey plots in full-Nos. 1713, 1715 to 1728 and part of cadastral survey plot No. 1708 of village Garui, jurisdiction list No.3; cadastral survey plots in full-Nos.3-5, 7-11, 20, 119-138, 140, 146-151, 155, 156, 158-161, 163-169, 171-180, 189-192, 165/371 and part of cadastral survey plots Nos. 12, 13, 15-19, 21, 22, 34-46,

117, 118, 139, 141-145, 152, 154, 157, 170, 181, 182, 184-188, 193 of village Kumarpur, jurisdiction list No.6; cadastral survey plots in full-Nos. 991-993, 998-1013, and part of cadastral survey plots Nos. 994 and 1029 of village Shitla, jurisdiction list No. 8; cadastral survey plots in full-Nos. 313-320, 356-382, 386, 389-394, 396-401, 403, 404, 432, 444-449, 451, 452, 516, 560-563, 565, 567, 580, 581, 995-997, 1058, 1060-1063, 1066, 1075, 1077-1085 and part of cadastral survey plots Nos. 262, 327, 352-354, 387, 388, 395, 402,....., 417, 564, 566, 568, 576, 578, 579, 994, 998, 1057, 1059, 1064, 1065, 1071, 1072 1973, 1074 and 1076 of village Govindapur, jurisdiction list No. 7, and ”

7. Learned Advocate for the petitioner submits that except the gazette notification under Section 6(1) of the Land Acquisition Act, there is no document found in the record to show that the predecessors-in-interest of the petitioners or the present petitioners were granted compensation and solatium as per Act 1 of 1894. There is also no record that after declaration under Section 6(1) any order under Section 7 of Act 1 of 1894 was actually made by the LA Collector. It is the case of the petitioners that only in the year 2009 they found some unauthorised persons measuring the subject land. At that point of time, they came to know that they are not the owners of the land. Surprisingly enough no notice was served upon them or their predecessors in interest under Section 4 of Act 1 of 1894. The respondent also failed to produce any order passed under Section 11A of Act 1 of 1894. Section 11A of Act 1 of 1894 mandates the collector to make an award under Section 11 within a period of two years from the date of publication of the declaration. I have already stated that the declaration under Section 6 of 1894 Act was published on 21st July,

1966. Therefore, the Collector ought to have made an award by 21st June, 1968. However, no award was passed. Therefore, entire proceeding for the acquisition of the subject land should be held to be lapsed. The learned Advocate for the petitioner, however, submits that since character of the land has been changed in the mean time by the requiring body, the petitioners have prayed for compensation, which they are entitled in accordance with law.

8. The learned Advocate for the respondents, on the other hand submits that the subject land was acquired in the year 1966. The instant writ petition has been filed after a lapse of about 50 years in 2016. Only on the ground of delay, the writ is liable to be dismissed. In support of his contention, the learned Advocate for the respondents refers to an unreported decision delivered by a Coordinate Bench in WPA 3729 of 2018 on 30th August, 2023. The Coordinate Bench relying on the decision of the Hon'ble Supreme Court in **Tilokchand Motichand vs. H.B. Munshi** reported in **(1969) 1 SCC 110**, held it was patently illegal for the petitioners to contend that it is upon the respondent authorities to indicate that compensation has been paid and to prove that the compensation has been paid in the year 1966, the State Government cannot be expected to produce the records that are more than 50 years old. In arriving at such decision the Coordinate Bench recorded paragraph 18 of the **Tilokchand Motichand** case (supra). The said paragraph is reproduced below:-

“18. It seems to me, however, that the above solution is not quite appropriate for petitions under Art. 32. A delay of 12 years or 6 years would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Beating in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, who had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the U.S.A. convinces me that the underlying idea of the Constitution was to provide an expeditious and authoritative remedy against the inroads of the State. If a claim is barred under the Limitation Act, unless there are exceptional circumstances, prima facie it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State, I would dismiss the petition on the ground of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all.”

9. The learned Advocate for the respondent also refers to the decision of the Hon'ble Supreme Court in **Shiv Dass vs. Union of India & Ors.** reported in **(2007) 9 SCC 274**, to submit that it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or

where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material.

10. In the instant case, it has been established on the basis of the affidavit that the petitioners were fully unaware about the acquisition of the subject land. It is the case of the petitioners that they came to know for the first time in 2009 that their land was acquired when three persons entered into the land and were taking measurement of the land. This fact has not been denied by the respondents. The question of delay or lapse can be raised when the petitioners in spite of having the knowledge that their land was acquired, have slept over their right. The record shows that the petitioners made series of representations, filed number of applications under RTI Act to know the status of their land, the number of LA case and the certified copies of the LA case, but till date, the record remains untraceable. The State has acquired the land, transferred it in favour of a development authority but has not paid them any compensation. At present the State is not in a position to return the land to the writ petitioners. Therefore, the State must compensate the writ petitioners who have lost their land. In fact, failure on the part of the State to declare an award within two years of acquisition, the entire acquisition proceeding should have been held to be lapsed. Failure on the part of the State to declare compensation is a glaring example of high handedness of State authority without following due process of law. Since,

I have held that when the State failed to declare award under Section 11A of Act 1 of 1894, the proceeding is required to be regularized under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. With regard to delay and laches the Division Bench of this Court in **MAT 207 of 2018: State of West Bengal & Ors vs. Asit Das & Ors.** has relied on the decision of the Hon'ble Supreme Court in **Vidya Devi vs. The State of Himachal Pradesh & Ors.** reported in **(2020) 2 SCC 569**. The facts in Vidya Devi is almost similar to our case. The State had taken over land of the appellant sometimes in 1967-68 for construction of road. Road was constructed in 1975. The appellant filed a writ petition in the Himachal Pradesh High Court in 2010. The State in its reply, took the point of adverse possession and also the point that the writ petition was barred by laches. The High Court dismissed the writ petition holding that, the same involved disputed questions of law and fact. The appellant's review petition was also dismissed by the High Court. The appellant approached the Supreme Court. The Hon'ble Supreme Court held as follows:-

“10.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution.

Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.

10.2 The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978,

however, it continued to be a human right in a welfare State, and a Constitutional right Under Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by the authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300A, can be inferred in that Article.

To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the Constitutional right under Article 300A of the Constitution.

Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai MANU/SC/0610/2005: (2005) 7 SCC 627, wherein this Court held that:

6. ... Having regard to the provisions contained in article 300-A

12 of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

In N. Padmamma v. S. Ramakrishna Reddy MANU/SC/7731/2008 : (2008) 15 SCC 517, this Court held that:

21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view the provisions of Article 300-A of the Constitution of India, must be strictly construed.

In Delhi Airtech Services Pvt. Ltd. and Ors. v. State of U.P. and Ors. MANU/SC/0956/2011 : (2011) 9 SCC 354, this Court recognized the right to property as a basic human right in the following words:

30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and

economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

“Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.

In *Jilubhai Nanbhai Khachar v. State of Gujarat* MANU/SC/0033/1995 : (1995) Supp. 1 SCC 596 this Court held as follows:

48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.

10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

.....

10.5 In a democratic polity governed by the Rule of law, the State could not have deprived a citizen of his property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.* MANU/SC/0933/2012 : (2013) 1 SCC 353 wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the Rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual

rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

.....

10.7. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

In *Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.*, MANU/SC/0933/2012 : (2013) 1 SCC 353 this Court while dealing with a similar fact situation, held as follows:

There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, Under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode."

12. I have already recorded that the facts in the instant writ petition is almost similar to Vidya Devi (supra). Acquisition of land without any notice, non-payment of compensation within the period prescribed under law, viz. Section 11A of Act 1 of 1894, non-production of record of LA Case No.22 of 1966-67 are glaring examples of the authority of the State of its sheer arbitrariness which the State is not authorized under the law. Non-payment of compensation to the petitioners violates their fundamental right under Article 21 of the Constitution as well as legal right enshrined under Section 300A of the Constitution.

13. For the reasons stated above, the instant writ petition is allowed on contest, however, without costs.

14. The State respondents are directed to pay compensation and other admissible dues in accordance with the provision of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(Bibek Chaudhuri, J.)